ordinary way a writ should not be renewed unless sufficient or good reason for renewal is shown. I think like Megaw J. in *Heaven* v. *Road & Rail Wagons*[1] that the change in wording of the new Order 6 Rules 7(2) as compared with the old Order 8 Rule 1(2) is not material and has not changed the old law in any relevant respect.

The principle or general rule is that in the absence of sufficient or good reason, the court will not exercise its discretion in favour of the renewal of the writ after the period allowed for service has expired, if the effect of doing so will be to deprive a defendant of the benefit of a limitation period which has accrued. This principle has not been deviated from since the judgment of Lord Goddard in *Battersby* v. *Anglo-American Oil Co. Ltd.*[2] and applied in *Heaven* v. *Road & Rail Wagons Ltd., supra,* and *Baker* v. *Bowketts Cakes Ltd.*[3]

Mr. Hilborne makes a point that in the present case the application for renewal of the writ was made before the time of its service has expired. In my view that does not detract from the requirement that sufficient or good reason must be shown before renewal will be granted (*Stevens* v. *Services Window & General Cleaning Co. Ltd.*[4]).

As pointed out by Mr. Hilborne, in exercising its discretion whether to grant or refuse renewal of the writ, the court is entitled to consider and to balance the hardship to the plaintiff which would follow if the validity of the writ is not extended against the hardship which the defendant might suffer through such extension (*Jones* v. *Jones*[5]). Mr. Hilborne says that in considering the balance of hardship in the present case the court should take cognizance of the fact that the plaintiff would have no redress in negligence against his solicitors and that the plaintiff would be left without remedy if the writ is not renewed.

Mr. Hilborne submits that the plaintiff's solicitors have acted reasonably in this matter because whereas it was possible that they might have been able to serve the writ in the last seven days of the validity of the writ it was by no means certain that they could do so and failure to do so would have meant making an application for extension after the validity of the writ has expired.

In *Easy* v. *Universal Anchorage Co. Ltd.*[6] it was held that the fact that negotiations for a settlement were in progress did not afford a sufficient reason for not serving the writ within 12 months of its issue nor did it afford sufficient reason for the court to exercise its discretion to renew the writ and that it was the duty of the plaintiff's solicitors to serve the writ in time even though negotiations were in progress.

The temporary loss of the files by the plaintiff's solicitors is not sufficient or good reason justifying the exercise of discretion to extend the validity of the writ as they were recovered before the expiry of the writ and service could have been attempted then.

I am unable to agree with Mr. Hilborne that the plaintiff's solicitors have acted reasonably in this matter. It is the duty of a plaintiff who issues a writ to serve it promptly. I am afraid the plaintiff's solicitors have been negligent in not serving the writ in time and the plaintiff has a remedy against them.

There is no sufficient or good reason for extending the validity of the writ in this case.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Battenberg & Talma.*

CHAN KUM FOOK & ORS. v. THE WELFARE INSURANCE CO. LTD.

[O.C.J. (Tan Ah Tah J.) September 20, 1975]
[Singapore — Civil Suit No. 1737 of 1972]

Negligence — Accident incurred whilst travelling in the course of employment — Company's motor van driven by employee of company — Whether insurance company liable to indemnify claims against driver — Motor Vehicles (Third-Party Risks and Compensation) Act, ss. 4(3), 8(1).

Insurance — Motor Insurance — Insurers relying on exceptions (ii) and (iii) to s. II of Policy — Motor Vehicles (Third-Party Risks and Compensation) Act ss. 4(3) and 8(1).

The first and second plaintiffs in this case were employees of the Century Engineering Co. (hereinafter called the Company). Whilst travelling as passengers in the company's motor van driven by its employee, one Yong Chan Seng, and in the course of employment, the first and second plaintiffs sustained injuries when the said motor van ran off the road and crashed into a tree owing to the negligence of Yong Chan Seng. The third plaintiff who was the father of the second plaintiff was put to loss and expense. The three plaintiffs claimed damages against the owner of the motor van and Yong Chan Seng.

The motor van was insured under a policy issued by the defendants. The plaintiffs in this case relied on sections 4(3) and 8(1) of the Motor Vehicles (Third Party Risks and Compensation) Act.

The defendants relied on exception (ii) to section II of the policy and denied liability to make any payments to the plaintiffs.

Exceptions (ii) and (iii) to Section II read as follows:—
"The Company shall not be liable in respect of
(i) ...
(ii) death of or bodily injury to any person in the employment of the Insured arising out of and in the course of such employment
(iii) death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or getting on to or alighting from the motor vehicle at the time of the occurrence of the event out of which any claim arises".

Held: (1) the effect of the words in brackets in exception (iii) is to make the defendants liable in respect of injuries sustained by the first and second plaintiffs who were passengers "carried by reason of or in pursuance of a contract of employment;

(2) judgment having been entered against Yong Chan Seng in the consolidated action, the defendants must indemnify him against the claims of the three plaintiffs.

[Editorial Note: The defendants' appeal (Civil Appeal No. 38 of 1974) was mentioned on November 17, 1975 when the court was informed that they had completely withdrawn their appeal and the judgment sum has been fully paid to the plaintiff.]

Cases referred to:-

(1) *Izzard* v. *Universal Insurance Co. Ltd.* [1937] A.C. 773.

(2) *Richards* v. *Cox* [1942] 2 All E.R. 624.

The following cases were also cited in argument: *Digby* v. *General Accident & Life Insurance Corporation, Ltd.* [1942] 2 All E.R. 319 at p. 321, *Manap bin Mat* v. *General Accident Fire & Life Assurance Corporation, Ltd.* [1971] 1 M.L.J. 134, *Lees* v. *Motor Insurers Bureau* [1952] T.L.R. 356, *Vandyke* v. *Fender* [1970] 2 Q.B. 292.

CIVIL SUIT.

Karuppan Chettiar for the plaintiffs.

M. Coomaraswamy for the defendants.

Tan Ah Tah J.: In this case the first and second plaintiffs were employees of the Century Engineering Co. (hereinafter called "the Company" as was done in the pleadings). The Company was the owner of a motor van No. SGB 2099 which was being driven by one Yong Chan Seng, a driver employed by the Company. The first and second plaintiffs were by reason of or in pursuance of a contract of employment with the Company travelling as passengers in the motor van which was being driven by Yong Chan Seng from the premises of the Company, which was their employer, to a worksite where they were to carry on work as employees of the Company. Owing to the negligence of Yong Chan Seng the motor van ran off the road and crashed into a tree resulting in the first and second plaintiffs sustaining bodily injuries. The third plaintiff who was the father of the second plaintiff was put to loss and expense.

The three plaintiffs commenced two separate proceedings claiming damages against the owner of the motor van and Yong Chan Seng. The two actions were consolidated and eventually judgment for damages was obtained by all three plaintiffs against the owner of the motor van and Yong Chan Seng.

The motor van was insured under a policy issued by the defendants and the present action has been brought by the three plaintiffs who are relying, *inter alia*, on section 4(3) and section 8(1) of the Motor Vehicles (Third-Party Risks and Compensation) Act (hereinafter referred to as "the Act").

It is submitted by counsel for the defendants that because of the wording of exception (ii) to Section II of the policy the defendants are not liable to make any payment to the plaintiffs.

Exceptions (ii) and (iii) to Section II read as follows: —

"The Company shall not be liable in respect of

(i) ...

(ii) death of or bodily injury to any person in the employment of the Insured arising out of and in the course of such employment

(iii) death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or getting on to or alighting from the motor vehicle at the time of the occurrence of the event out of which any claim arises".

The wording of these two exceptions is based on the first two provisos to section 4(1) of the Act.

In my opinion the effect of the words in brackets in exception (iii) is to make the defendants liable in respect of injuries sustained by the first and second plaintiffs who were passengers "carried by reason of or in pursuance of a contract of employment." In the case of *Izzard* v. *Universal Insurance Co. Ltd.*[1] Lord Wright said at page 779: —

"It is clear that though passenger risk in the full sense of the term is excluded, a certain limited class of passenger risk is specifically covered — namely, that described in the words in brackets in (c) quoted above which is in the form of an exception, and thus constitutes a positive cover."

Another matter which arises for consideration is the effect of clause 2 in Section II of the policy. Clause 2 reads as follows: —

"2. In terms of and subject to the limitations of and for the purposes of this section the Company will indemnify any authorised driver who is driving the motor vehicle provided that such authorised driver

(i) shall as though he were the Insured observe fulfil and be subject to the Terms of this Policy insofar as they can apply

(ii) is not entitled to indemnity under any other policy".

There is no doubt that Yong Chan Seng was the Authorised Driver of the motor van. It has also been conceded by counsel for the defendants that Yong Chan Seng was not entitled to indemnity under any other policy. The first and second plaintiffs were clearly employees of the Company and not of Yong Chan Seng. As to the meaning of the phrase "the Terms of this Policy" it is relevant to refer to the words "Now this Policy Witnesseth That in respect of events occurring during the Period of Insurance and subject to the terms, exceptions and conditions contained herein or endorsed hereon (hereinafter collectively referred to as the Terms of this Policy)."

It is clearly stated in clause 2 in Section II of the policy that the Company *i.e.* the Insurance Company will indemnify any Authorised Driver who is driving the motor vehicle provided that certain conditions are observed. In my opinion all the relevant conditions have been compiled with. Judgment having been entered against Yong Chan Seng in the consolidated action, the defendants must now indemnify him against the claims of the three plaintiffs. The facts of this case bear some resemblance to the facts in *Richards* v. *Cox*.[2]

There will be judgment for the first plaintiff for the sum of $120,343.64, for the second plaintiff for the sum of $11,159.50, for the third plaintiff for the sum of $58.27 and in addition for all the plaintiffs for the sum of $12,853.27 being their costs in respect of the consolidated action. The total sum of $144,413.68 is to be paid to the Public Trustee to hold in trust for the persons entitled to the benefit thereo. There will also be the usual orders as to costs.

Judgment for the plaintiffs.

Solicitors: *Murphy & Dunbar; Rodyk & Davidson.*